

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOACHIM E. DRESSLER,

Petitioner,

v.

Case No. 97-C-0431

GARY R. MCCAUGHTRY,

Respondent.

**ORDER GRANTING EXTENSION OF TIME BY WHICH
TO FILE NOTICE OF APPEAL**

On September 28, 2006, this court issued an order denying petitioner Joachim E. Dressler's ("Dressler") motion for relief from judgment. Pursuant to Fed. R. App. 4(a), Dressler has 30 days from the entry of that order by which to file a notice of appeal, i.e., on or before October 28, 2006. On October 17, 2006, this court received a letter from Dressler seeking an extension of another 30 days for him to file a notice of appeal from that order, together with a request for a certificate of appealability.

Rule 4(a)(5) of the Federal Rules of Appellate Procedure provides that the district court may extend the time to file a notice of appeal if "a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires," so long as the party show excusable neglect or good cause for such extension. In his letter Dressler sets forth good cause for such extension, to wit, the limited amount of time that he is allowed in the prison library. Thus, his motion will be granted, with one slight amendment.

Rule 4(a)(5)(C) provides that "[n]o extension under this Rule 4(a)(5) may exceed 30 days

after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.” Dressler seeks to have until November 28, 2006, by which to file his notice of appeal. The original 30 day deadline for filing a notice of appeal is set to expire on October 28, 2006 (30 days after September 28). However, October 28, 2006, falls on a Saturday. Thus, in accordance with Fed. R. App. P. 26(a), it would seem that the 30-day deadline for filing a notice of appeal is actually set to expire on Monday, October 30, 2006. Unlike September, October has 31 days. This means that 30 days after October 30 would be November 29. Thus, Dressler’s motion for extension of time will be granted. He will be granted until November 29, 2006, by which to file his notice of appeal.

NOW THEREFORE IT IS ORDERED that Dressler’s motion for extension of time by which to file a notice of appeal be and hereby is **GRANTED**;

IT IS FURTHER ORDERED that Dressler shall file his notice of appeal no later than November 29, 2006.

SO ORDERED this 20th day of October 2006, at Milwaukee, Wisconsin.

/s/ William E. Callahan, Jr.
WILLIAM E. CALLAHAN, JR.
United States Magistrate Judge